

RICHARD H. AUSTIN

SECRETARY OF STATE

STATE TREASURY BUILDING



LANSING

MICHIGAN 48918

February 22, 1984

George F. Hill
Consumers Power Company
212 W. Michigan Avenue
Jackson, Michigan 49201

Dear Mr. Hill:

This is in response to your request for a declaratory ruling concerning applicability of the lobby act (the "Act"), 1978 PA 472, to the relationship between Consumers Power Company and its employees who are also public officials.

Specifically, you indicate Consumers Power Company is a lobbyist as defined in section 5(4) of the Act (MCL 4.415). The company employs several individuals who are members of state boards and commissions and therefore public officials who can be lobbied under the Act. Consumers Power "will be paying these employees wages and reimbursing them for meals and beverages. These meals may be purchased for the employee when he or she is out of town on Company business, when he or she works overtime or when he or she takes a party out to lunch or dinner for purposes of conducting Company business. On none of these occasions would the employee be conducting or engaged in any activity connected to his or her position on the state board or commission."

Your questions relating to these facts are set out and answered below.

- I. "Is Consumers Power Company as a lobbyist required to report as financial transactions all payments of wages, including expense account reimbursement paid to employees who are public officials?"

"Financial transaction" is defined in section 3(3) of the Act (MCL 4.413) as a "loan, purchase, sale, or other type of transfer or exchange of money, goods, other property, or services for value."

Pursuant to section 8(1) of the Act (MCL 4.418), a lobbyist must file reports on January 31 and August 31 of each year. In addition to other information required by this section, each report must include the following:

"Sec. 8. (1)(c) An account of every financial transaction during the immediately preceding reporting period between the lobbyist or lobbyist agent, or a person acting on behalf of the lobbyist or lobbyist agent, and a public official or a member of the public official's immediate family, or a business with which the individual is associated in which goods and services having value of at least \$500.00 are involved. The account shall include the date and nature of the transaction, the parties to the transaction, and the amount involved in the transaction. This subdivision shall not apply to a financial transaction in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist. This subdivision shall not apply to a transaction undertaken in the ordinary course of the lobbyist's business, in which fair market value is given or received for a benefit conferred."

As you note, the disclosure required by this section is not limited to financial transactions made for the purpose of lobbying. However, section 8(1)(c) does exempt financial transactions between a lobbyist and a public official "in the ordinary course of the business of the lobbyist, if the primary business of the lobbyist is other than lobbying, and if consideration of equal or greater value is received by the lobbyist."

"Ordinary course of business" is defined in Black's Law Dictionary as a normal or usual matter "which transpires as a matter of daily custom in business." The payment of an employee's wages and reimbursement of an expense account fall within this definition. Since Consumers Power Company's primary business is not lobbying, payment of wages and expenses in the specific circumstances you describe are financial transactions in the ordinary course of business which are exempt from disclosure under section 8(1)(c), provided the payments do not exceed the value of the consideration received by the company.

II. "Is Consumers Power Company as a lobbyist required to account for all expenditures for food and beverage provided its employees who are public officials?"

Section 8(1)(b)(ii) and rule 56, 1981 AACS R4.456, require a lobbyist to report expenditures for food and beverages provided for public officials. There is no exemption for food and beverage expenditures incurred in the ordinary course of business or for non-lobbying purposes. The reason for this approach, as explained by the Court of Appeals in its discussion of financial transactions in Pletz v Secretary of State, 125 Mich App 335 (1983), is that food and beverage expenditures "even where unrelated to a particular policy issue, may affect the recipient's inclination on matters of interest to the lobbyist."

This rationale does not apply to an employer/lobbyist who provides food and beverage to an employee while "conducting company business." Payment or reimbursement of meal expenses is part of the employee's ordinary compensation and

does not increase the likelihood that the employee, when acting as a public official, will promote the employer/lobbyist's interests. Thus, the legislature's purpose is not served by requiring an employer, who happens to be a lobbyist, to account for food and beverages provided to its employees. Consumers Power Company is therefore not required to report food and beverage expenditures for an employee who is a public official, provided the expenditures are for food and beverage consumed by the employee in the course or scope of employment.

III. "If the answer to questions number one and two is 'No', what expenditures must Consumers Power Company report?"

Food and beverage expenditures by an employee/public official are accounted for in the same manner as expenditures made by an employee who is not an official. If a Consumers Power employee buys lunch for a public official who is not employed by the company and the company either pays the bill directly or reimburses the employee, Consumers Power Company must report the cost of the public official's lunch.

Section 8(1)(c) also requires Consumers Power Company to report any financial transaction between the company and an employee/public official which is not in the ordinary course of business or for which consideration of equal or greater value is not received. Moreover, the lobbyist must disclose similar financial transactions between the company and the employee's immediate family or a business with which the employee or immediate family member is associated.

Finally, the Act requires Consumers Power Company to report any expenditures made for the purpose of lobbying. This would include expenditures made to lobby the employee in his or her capacity as a public official and compensation or reimbursement paid to the employee for lobbying on behalf of the company. You should be aware, however, that section 11(4) of the Act (MCL 4.421) prohibits a public official from receiving compensation or reimbursement, other than from the state, for personally engaging in lobbying unless the official is "an individual who is appointed or elected to a board or commission and is not an ex officio member or prohibited by law from having other employment."

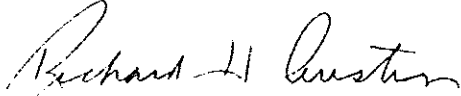
IV. "If the answer to questions number one and two is 'Yes', in view of Act 397, Public Acts of 1978, may Consumers Power Company survey its employees to determine which are public officials?"

Questions one and two were answered in the negative. However, for your information, the Department has compiled a list of officials in the executive and legislative branches. A copy of the list is attached for your convenience.

George F. Hill
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This response is a declaratory ruling relating to the specific facts and questions you have presented.

Very truly yours,



Richard H. Austin
Secretary of State

RHA/cw

Attachment